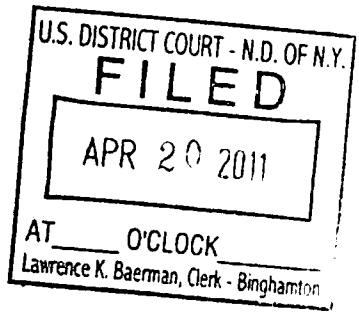
I reserve the right to change, alter, and remove this document at any time.
Without the leave of this or any other court.
Richard-Enrique; Ulloa, Sui Juris, unrepresented
Nation "New York".
general post-office.
Hurley-town.
United States Minor, Outlying Islands. Near. [12443-9998]



IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,[sic] Plaintiff, v. RICHARD ENRIQUE ULLOA,[sic] Defendant.	CASE # 1:10-CR-0321 (TJM), REPLY TO PROSECUTIONS RESPONSE TO MOTION 29 & 33

REPLY TO PROSECUTIONS RESPONSE TO MOTION 29 AND 33

state of New York }
} §
county of Ulster }

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COMES NOW, Petitioner, richard-enrique, unrepresented, and as always by special invitation, as Beneficiary, and as a living man and the Executor of the Estate Trust RICHARD ENRIQUE ULLOA, Reply to "Government's Response to Defendant's Post-Trial Motion for Judgment Acquittal, to take judicial notice the government's response is filled with conclusory statements, hearsay, and again, and as usual, facts not in evidence. I will set up to reply in the same numbering system the Government Response used.

PRELIMINARY STATEMENT

Defendant Richard Enrique Ulloa filed a post-trial motion, *see ECF no. 114*, seeking a judgment of acquittal pursuant to Rules 29 and 33, of the Federal Rules of Criminal Procedure. As set forth below, defendant's motion should be denied. *[The superseding indictment charges Defendant Richard Enrique Ulloa with seven counts of mail fraud pursuant to 18 U.S.C. §§ 1341 and 1349.]* The trial commenced on December 28, 2010. On December 30, 2010, the jury returned guilty verdicts on all seven counts.

[The superseding indictment charges Defendant Richard Enrique Ulloa with seven counts of mail fraud pursuant to 18 U.S.C. §§ 1341 and 1349.]

Nowhere in the indictment is there a charge of mail fraud, 18 U.S.C. § 1341, is a "swindles and fraud" statute and not a "mail fraud" statue. Mail fraud is investigated and processed by the United States Postal Inspection Service, which is a service from the United States Postal Police, and reported from a complaint either online or as part of the U.S. Postal Inspection Service Mail Fraud Report, PS form 8165. Neither this form nor any other complaint was presented in any testimony or brought into evidence during the trial. Stating that mail fraud was proving is a conclusory statement and I object as it is not in evidence.

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I.

EVIDENCE PRESENTED AT TRIAL

A. The False Ulster County UCC Liens and Filings.

Police Officer Joshua Caliendo testified that on or about May 13, 2009, he stopped a vehicle and issued traffic tickets to the driver, defendant Richard Enrique Ulloa. The traffic tickets required defendant's appearance before Town Justice Robert Vosper. Town Justice Robert Vosper testified that ***[defendant appeared in town court in June 2009, and the Town Justice set bail, and bail resulted in defendant's incarceration for a period of time]***.

Police Officer Caliendo testified that he received ***[a copy of a Washington State UCC Lien]***, by mail. ***[The evidence at trial established that the lien was filed]*** against Joshua Caliendo personally, by Richard Enrique Ulloa, in the amount of more than $550,000,000, and was dated September 24, 2009, months after the vehicle stop. *See Trial Exhibit 1* (Count Two).

Likewise, Town Justice Vosper testified that he received ***[a copy of a Washington State UCC Lien]***, by mail. ***[The evidence at trial established that the lien was filed]*** against Robert N. Vosper, by Richard Enrique Ulloa, in the amount of more than $550,000,000, and was dated September 24, 2009, months after the court appearance. *See Trial Exhibit 3* (Count One).

[The evidence at trial established that the UCC liens] were typically ***[preceded by written demands for money]*** by defendant Ulloa. For example, Town Justice Vosper testified that he received ***[a "Declaration and Notice of Final Determination and Judgment in Nihil Deceit", which demand payment of monies owed]***. *See Trial Exhibit 2*. Following non-payment, ***[defendant filed a UCC lien in either Washington or New York State]***. In ***[each instance the UCC lien]*** stated that it "WILL BE SERVED ON ALL FINANCIAL INSTITUTIONS." ***[Moreover, the liens were purportedly based on "NOTICE OF CLAIM OF MARITIME LIEN[s]"]***, which identified persons as vessels. In some instances, ***[the purported Maritime Liens] [contained the date of birth and/or the social security number of the purported debtors]***. ***[The Maritime Liens were purportedly based]*** prior on "Negative Averment[s]."

Beatrice Havranek, the County Attorney for Ulster County, testified ***[regarding the many frivolous written demands for money filed by defendant and the substantial country resources and personnel that were consumed to address said filings]***. In one example, Ms. Havranek testified regarding a frivolous "Negative Averment" defendant filed; the county rejected said document. *See Exhibit 13*. She also testified as to the legal fees incurred by an insurance carrier concerning representation of the county regarding a federal civil law suit filed on behalf of the county.

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[Ms. Havranek testified that failure to address each and every filing may have resulted in a judgment against the county and the need to raise taxes to satisfy that judgment.]

[Nina Postupack, the Clerk for Ulster County, testified that she personally advised defendant that the county would not accept the purported Maritime Liens], and further testified that defendant was required to pick-up the rejected Maritime Liens.

Response:

[defendant appeared in town court in June 2009, and the Town Justice set bail, and bail resulted in defendant's incarceration for a period of time].

There is no evidence in any record either in the Town of Rosendale or in this cases record that defendant was incarcerated for a period of time in June 2009, that is a flat out lie, and a fraud upon the court and sanctions are requested.

[a copy of a Washington State UCC Lien]

There is no such thing, there was never any Lien filed, a Uniform Commercial Code form 1 is a Financing Statement, it is not a lien, it was not proven that it was a lien, and a "Notice of Lien" is just a notice. Stating that something is a lien is a conclusory statement and a fact not in evidence, and no facts were provided during trial that any document was a lien.

[The evidence at trial established that the lien was filed]

There was never any Lien filed, a Uniform Commercial Code form 1 is a Financing Statement, it is not a lien, it was not proven that it was a lien, and a "Notice of Lien" is just a notice. Stating that something is a lien is a conclusory statement and a fact not in evidence, and no facts were provided during trial that any document was a lien.

[a copy of a Washington State UCC Lien]

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notice. Stating that something is a lien is a conclusory statement and a fact not in evidence, and no facts were provided during trial that any document was a lien.

[The evidence at trial established that the lien was filed]

There was never any Lien filed, a Uniform Commercial Code form 1 is a Financing Statement, it is not a lien, it was not proven that it was a lien, and a "Notice of Lien" is just a notice. Stating that something is a lien is a conclusory statement and a fact not in evidence, and no facts were provided during trial that any document was a lien.

[The evidence at trial established that the UCC liens]

There was never any Lien filed, a Uniform Commercial Code form 1 is a Financing Statement, it is not a lien, it was not proven that it was a lien, and a "Notice of Lien" is just a notice. Stating that something is a lien is a conclusory statement and a fact not in evidence, and no facts were provided during trial that any document was a lien.

[preceded by written demands for money]

In every offer and opportunity to cure there was also included an opportunity to cure the dishonor, as testimony showed, they chose not to respond, making silence an acknowledgment of guilt and agreement.

[a "Declaration and Notice of Final Determination and Judgment in Nihil Deceit", which demand payment of monies owed]

In every offer and opportunity to cure there was also included an opportunity to cure the dishonor, as testimony showed, they chose not to respond, making silence an acknowledgment of guilt and agreement.

[defendant filed a UCC lien in either Washington or New York State]

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There was never any Lien filed, a Uniform Commercial Code form 1 is a Financing Statement, it is not a lien, it was not proven that it was a lien, and a "Notice of Lien" is just a notice. Stating that something is a lien is a conclusory statement and a fact not in evidence, and no facts were provided during trial that any document was a lien.

[each instance the UCC lien]

There was never any Lien filed, a Uniform Commercial Code form 1 is a Financing Statement, it is not a lien, it was not proven that it was a lien, and a "Notice of Lien" is just a notice. Stating that something is a lien is a conclusory statement and a fact not in evidence, and no facts were provided during trial that any document was a lien.

[Moreover, the liens were purportedly based on "NOTICE OF CLAIM OF MARITIME LIEN[s]"]

As stated it was based on "Notice" not on an actual lien. There was never any Lien filed, a Uniform Commercial Code form 1 is a Financing Statement, it is not a lien, it was not proven that it was a lien, and a "Notice of Lien" is just a notice. Stating that something is a lien is a conclusory statement and a fact not in evidence, and no facts were provided during trial that any document was a lien.

[the purported Maritime Liens]

There was never any Lien filed, a Uniform Commercial Code form 1 is a Financing Statement, it is not a lien, it was not proven that it was a lien, and a "Notice of Lien" is just a notice. Stating that something is a lien is a conclusory statement and a fact not in evidence, and no facts were provided during trial that any document was a lien.

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[contained the date of birth and/or the social security number of the purported debtors].

No evidence was provided that any social security and or birth days were published in any public document, in fact the UCC expert from the New York State Department of State testified that they redact those types of information as well as others.

[The Maritime Liens were purportedly based]

There was never any Lien filed, a Uniform Commercial Code form 1 is a Financing Statement, it is not a lien, it was not proven that it was a lien, and a "Notice of Lien" is just a notice. Stating that something is a lien is a conclusory statement and a fact not in evidence, and no facts were provided during trial that any document was a lien.

[regarding the many frivolous written demands for money filed by defendant and the substantial country resources and personnel that were consumed to address said filings].

By Havranek's own testimony, when asked Havranek responded that she never responded to ANY of the Affidavit's , Negative Averments and opportunity to Cure, Notices, NIHIL DECIT's or any of the Administrative process that were sent to her, she claimed she did not understand them, but in cross, she read each paragraph and acknowledged that she did understand, so if she did not read, respond, make phone calls, send emails on the Administrative Process, it is hard to believe she spent any County resources on matters she did not address. She did state that she responded to lawsuits filed, and that is part of her roles and responsibilities, but have nothing to do with the "Notice of Lien" or the Administrative Process used, that she claimed she did not respond to, or even spent a minute to make a phone call.

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[Ms. Havranek testified that failure to address each and every filing may have resulted in a judgment against the county and the need to raise taxes to satisfy that judgment.]

Havranek in her own words testified she never responded to any of the "Notices of Lien" or that Administrative Process, because she did not "understand them". The filings Havranek is speaking of must be Complaints filed in the courts, which they need to be address as part of the normal course of business, day in and day out. That is her job. If the corruption was not so rampant in Ulster County maybe Havranek could finally have a normal boring, non-productive county servant job. (**See Exhibits attached**)

[Nina Postupack, the Clerk for Ulster County, testified that she personally advised defendant that the county would not accept the purported Maritime Liens]

Of course, the County rejected the maritime liens. That is because they were NOT LIENS as far as Nina was concerned, she asked me put in the proper form and not a Notice of Lien, it had to be a Lien, and it had to be signed by a Judge. She provided the correct code that I needed to file a proper Lien, and it could not be a "Notice" for it to be a Lien.

B. Executives of Mid-Hudson Valley Federal Credit Union ("MHVFCU") William Spearman and John Dwyer, and legal counsel for MHVFCU, William Frame, Esq., testified regarding a foreclosure proceeding brought against real property held by defendant and ***[the frivolous UCC liens]*** that followed. Specifically, William Frame, Esq., testified that, in September 2009, a state court entered a foreclosure judgment on behalf of MHVFCU regarding real property held by defendant. He further testified that in reaching its decision to enter a foreclosure judgment, the state court considered defendant's affidavit of negative averment, opportunity to cure, and counterclaims, and rejected same.

The evidence at trial showed that one month following the foreclosure judgment, defendant filed ***[a Washington State UCC Lien using the mail]***. ***[John Dwyer testified that he received a copy of a Washington State UCC Lien]***, by mail. ***[The evidence at trial***

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established that the lien was filed against John Dwyer], by Richard Enrique Ulloa, in the amount of more than $2.8 billion, and was dated October 6, 2009. *See Trial Exhibit 4* (Count Three). ***[This lien too stated]*** that it "WILL BE SERVED ON ALL FINANCIAL INSTITUTIONS", and was based on a frivolous "MARITIME LIEN."

The evidence at trial further established that, on October 20, 2009, defendant sent an email to the National Credit Union Administration, the regulatory authority of MHVFCU, and ***[advised that authority of the $2.8 billion lien]*** against MHVFCU. *See Trial Exhibit 6.* William Spearman testified as to the potential problems for MHVFCU that might have occurred if MHVFCU had failed to address said lien. Mr. Spearman also testified regarding the need to retain legal counsel, and the costs associated with same, to address ***[defendant's frivolous liens]***.

William Frame, Esq., legal counsel for MHVFCU, testified regarding a temporary restraining order MHVFCU obtained enjoining defendant from, among other things, filing Maritime Liens or Judgments. *See Trial Exhibit 7*, dated November 2, 2009. He also testified regarding an injunction MHVFCU obtained further enjoining defendant from, among other things, filing Maritime Liens or Judgments. *See Trial Exhibit 8*, dated December 9, 2009.

Finally, Mr. Frame testified as to the efforts made to serve defendant with notice of the temporary restraining order, and the defendant's participation regarding the injunction proceeding. Mr. Frame also testified regarding a ***[UCC lien filed]*** against his law firm, and the potential problems to the law firm of not addressing ***[the fraudulent lien]***. Finally, Mr. Frame testified regarding a conversation he had with defendant Ulloa wherein the defendant revealed that he wanted to raised the costs of litigation by stating in substance the he [Ulloa] wanted to fill his [Frame's] file cabinet with legal memoranda.

The evidence at trial further established that ***[defendant filed a New York State UCC Lien]***, by mail, months after the temporary restraining order and the injunction. Indeed, *Trial Exhibit 5* (Count Four) ***[is a New York State UCC lien filed against MHVFCU]*** and its executives and its legal counsel by Richard Enrique Ulloa, in the amount of more than $2.8 billion, and was dated February 12, 2010. *See Trial Exhibit 4* (Count Three).

[This lien too stated] that it "WILL BE SERVED ON ALL FINANCIAL INSTITUTIONS", and was ***[based on a frivolous and prohibited "MARITIME LIEN.]***" See *also Trial Exhibit 9* (Count Five, UCC Financing Statement, dated February 12, 2010, ***[false promissory note by Denny Ray Harding]***, evidence of mailing).

Instead of taking the courts time in repeating the same thing over and over, it is fair to state that it was never proven, no testimony was stated, no evidence was brought into the record, that a lien was ever filed, or that a judge from the Federal Courts or the Common Law courts, ever converted a "Notice of Lien" into an actual "Judgment" which is needed to proceed to filing with the County or county, and recording with the County Recorder or the county recorder, and finally having the sheriff file a lien and a Writ of Execution. So as the court can

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see, if that many steps were left to execute before a "Lien" would be in effect or converted from a "Notice of Lien" to and actual "Lien" as required by new York State law.

Instead the prosecuting continues to use conclusory statements and evidence no in the record to spout their false accusations and false statements.

> *"Conclusory statements are not credible or susceptible to being readily controverted."* Ryland Group, Inc. v. Hood, 924 S.W.2d 120, 122 (Tex.1996).
>
> *"A conclusory statement is one that does not provide the underlying facts to support the conclusion."* Haynes v. City of Beaumont, 35 S.W.3d 166, 178 (Tex.App.-Texarkana 2000).
>
> *"But the majority, the four more conservative justices plus Justice Kennedy, ruled that such a pleading was too conclusory, and not specific enough. Stated the Court: "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."" Ashcroft v. Iqbal,* 129 S. Ct. 1937 - Supreme Court 2009

There is no testimony or facts in the record that the "Notice of Lien" that was filed is a "LIEN". In order for a lien to be a lien, one must we must follow the rules in the New York State LIE code or Lien Law, one must obtain a judgment, either a judgment from a Common Law Jury and then filed as a Foreign Judgment with a Federal Magistrate Judge, or in New York State court as a Show Cause Order or Action, then when a judgment is acquired, it is still NOT a lien, one must go to the County Clerk and file, then the County Recorder and file, then go to the sheriff and file the documents from the County, then obtain a Writ of Execution from the sheriff. Now it is a lien. None of these steps were taken, so the prosecution calling this a lien does not make it so. Therefore, I object to it being stated that a lien was filed when it was NOT a lien.

> *"A judgment in and of itself does not necessarily constitute a lien upon any property unless made so by statute. In Von Segerlund et al. v. Dysart, et al., 9 Cir., 137 F.2d 755, 757, this court said: "A judgment lien as it exists in the United States is a creature of statute, and in the absence of statute does not give rise to a 418*418 lien* ***until an execution is delivered to the sheriff.***"

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Miller v. BANK OF AMERICA, NT & SA, 166 F. 2d 415 - Circuit Court of Appeals, 9th Circuit 1948

"The general rule is that goods and chattels of a judgment debtor are subject to liens predicated upon an execution but are not subject to liens predicated upon the rendition or entry of judgment. In re Bailey, D.C., 144 F. 214, 215, it is said: "A judgment itself does not necessarily constitute a lien upon any property, unless made so by statute. Usually, as it respects personal property, it only becomes a lien by virtue of ***an execution and a levy*** *thereunder. From the time of the levy, the lien is deemed to attach, and not before."*[7] Miller v. BANK OF AMERICA, NT & SA, 166 F. 2d 415 - Circuit Court of Appeals, 9th Circuit 1948

"In Re Richenell Fabric Mfg. Co., Inc., D. C., 31 F.Supp. 645, 647, also cited with approval in the Von Segerlund case, the court said: "In the case of judgments, judgment creditors obtain no lien against personal property ***until execution and levy.***" Miller v. BANK OF AMERICA, NT & SA, 166 F. 2d 415 - Circuit Court of Appeals, 9th Circuit 1948

" And the protection accorded a judgment creditor within the meaning of section 6323 does not apply until his judgment becomes a lien under State law (Miller v. Bank of America, ***166 F.2d 415****; Fidelity & Deposit Co. v. New York City Housing Auth., 241 F.2d 142). In New York, a judgment becomes a lien on funds in the hands of a third party from the time of service of a subpœna and restraining order in proceedings supplementary to judgment (Civ. Prac. Act, §§ 779, 781)."* Davis & Warshow v. Iser, Inc., 30 Misc. 2d 528 - NY: Supreme Court 1961

Liens must comply with NYS LIE (Lien Law) Article 3 Sections 40 – 65 or NYS LIE Article 4 Sections 80 – 107 and follow Article 9 Sections 200 - 211

C. The False Wells Fargo Liens.

Brandlon L. Cannon testified on behalf of Wells Fargo Bank, N.A., regarding a second foreclosure proceeding brought against real property held by defendant. See *Trial Exhibit 21* (Wells Fargo financial summary showing a balance of more than $170,000).

Trial Exhibit 17 (admitted through a representative of the New York State Department of State) is ***[a summary of New York State UCC liens]*** filed by Richard Enrique Ulloa. According to that summary, ***[defendant filed a UCC lien against Wells Fargo Bank, N.A]***., and the law firm that represented the bank, on our about *January 4, 2010. See Trial Exhibit 19* (Count Six, UCC

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Financing Statement against Wells Fargo, dated February 12, 2010, ***[false promissory note by Denny Ray Harding]***, evidence of mailing); *see also Trial Exhibit 20* (Count Seven, ***[UCC Financing Statement against legal counsel for Wells Fargo]***, dated February 13, 2010).

Once again, conclusory statements, evidence not in the record, there was never any evidence that any lien was filed, or that any of the promissory notes were false or fraudulent, and more importantly there was NEVER a financing statement filed against debtor Wells Fargo, it was a credit.

There is no testimony or facts in the record that the "Notice of Lien" that was filed is a "LIEN". In order for a lien to be a lien, one must we must follow the rules in the New York State LIE code or Lien Law, one must obtain a judgment, either a judgment from a Common Law Jury and then filed as a Foreign Judgment with a Federal Magistrate Judge, or in New York State court as a Show Cause Order or Action, then when a judgment is acquired, it is still NOT a lien, one must go to the County Clerk and file, then the County Recorder and file, then go to the sheriff and file the documents from the County, then obtain a Writ of Execution from the sheriff. Now it is a lien. None of these steps were taken, so the prosecution calling this a lien does not make it so. Therefore, I object to it being stated that a lien was filed when it was NOT a lien.

> *"A judgment in and of itself does not necessarily constitute a lien upon any property unless made so by statute. In Von Segerlund et al. v. Dysart, et al., 9 Cir., 137 F.2d 755, 757, this court said: "A judgment lien as it exists in the United States is a creature of statute, and in the absence of statute does not give rise to a 418*418 lien* ***until an execution is delivered to the sheriff****."* Miller v. BANK OF AMERICA, NT & SA, 166 F. 2d 415 - Circuit Court of Appeals, 9th Circuit 1948

> *"The general rule is that goods and chattels of a judgment debtor are subject to liens predicated upon an execution but are not subject to liens predicated upon the rendition or entry of judgment. In re Bailey, D.C., 144 F. 214, 215, it*

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is said: "A judgment itself does not necessarily constitute a lien upon any property, unless made so by statute. Usually, as it respects personal property, it only becomes a lien by virtue of ***an execution and a levy*** *thereunder. From the time of the levy, the lien is deemed to attach, and not before."*[21] Miller v. BANK OF AMERICA, NT & SA, 166 F. 2d 415 - Circuit Court of Appeals, 9th Circuit 1948

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" And the protection accorded a judgment creditor within the meaning of section 6323 does not apply until his judgment becomes a lien under State law (Miller v. Bank of America, ***166 F.2d 415****; Fidelity & Deposit Co. v. New York City Housing Auth., 241 F.2d 142). In New York, a judgment becomes a lien on funds in the hands of a third party from the time of service of a subpœna and restraining order in proceedings supplementary to judgment (Civ. Prac. Act, §§ 779, 781)."* Davis & Warshow v. Iser, Inc., 30 Misc. 2d 528 - NY: Supreme Court 1961

Liens must comply with NYS LIE (Lien Law) Article 3 Sections 40 – 65 or NYS LIE Article 4 Sections 80 – 107 and follow Article 9 Sections 200 - 211

D. The Testimony of Michael Schnittman.

Michael Schnittman testified regarding a collection action brought against a person associated with defendant and a judgment he obtained in March 2009. He also testified that defendant subsequently ***[served him with a frivolous]*** "Affidavit of Negative Averment, Opportunity to Cure, And Counterclaim", and Mr. Schnittman rejected same. ***[Defendant subsequently filed a UCC lien against Michael S. Schnittman]****. See Trial Exhibit 17 (****[summary of New York State UCC liens filed by Richard Enrique Ulloa]****,* ***[defendant filed a UCC lien against Schnittman, among others, on our about February 12, 2010]****).*

Once again, conclusory statements, evidence not in the record, there was never any evidence that any lien was filed, there is no evidence that any documents were frivolous, that is just an opinion, not a fact.

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There is no testimony or facts in the record that the "Notice of Lien" that was filed is a "LIEN". In order for a lien to be a lien, one must we must follow the rules in the New York State LIE code or Lien Law, one must obtain a judgment, either a judgment from a Common Law Jury and then filed as a Foreign Judgment with a Federal Magistrate Judge, or in New York State court as a Show Cause Order or Action, then when a judgment is acquired, it is still NOT a lien, one must go to the County Clerk and file, then the County Recorder and file, then go to the sheriff and file the documents from the County, then obtain a Writ of Execution from the sheriff. Now it is a lien. None of these steps were taken, so the prosecution calling this a lien does not make it so. Therefore, I object to it being stated that a lien was filed when it was NOT a lien.

> *"A judgment in and of itself does not necessarily constitute a lien upon any property unless made so by statute. In Von Segerlund et al. v. Dysart, et al., 9 Cir., 137 F.2d 755, 757, this court said: "A judgment lien as it exists in the United States is a creature of statute, and in the absence of statute does not give rise to a 418*418 lien* ***until an execution is delivered to the sheriff****."* Miller v. BANK OF AMERICA, NT & SA, 166 F. 2d 415 - Circuit Court of Appeals, 9th Circuit 1948

> *"The general rule is that goods and chattels of a judgment debtor are subject to liens predicated upon an execution but are not subject to liens predicated upon the rendition or entry of judgment. In re Bailey, D.C., 144 F. 214, 215, it is said: "A judgment itself does not necessarily constitute a lien upon any property, unless made so by statute. Usually, as it respects personal property, it only becomes a lien by virtue of* ***an execution and a levy*** *thereunder. From the time of the levy, the lien is deemed to attach, and not before."[2]"* Miller v. BANK OF AMERICA, NT & SA, 166 F. 2d 415 - Circuit Court of Appeals, 9th Circuit 1948

> *"In Re Richenell Fabric Mfg. Co., Inc., D. C., 31 F.Supp. 645, 647, also cited with approval in the Von Segerlund case, the court said: "In the case of judgments, judgment creditors obtain no lien against personal property* ***until execution and levy****."* Miller v. BANK OF AMERICA, NT & SA, 166 F. 2d 415 - Circuit Court of Appeals, 9th Circuit 1948

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> *" And the protection accorded a judgment creditor within the meaning of section 6323 does not apply until his judgment becomes a lien under State law (Miller v. Bank of America, **166 F.2d 415**; Fidelity & Deposit Co. v. New York City Housing Auth., 241 F.2d 142). In New York, a judgment becomes a lien on funds in the hands of a third party from the time of service of a subpœna and restraining order in proceedings supplementary to judgment (Civ. Prac. Act, §§ 779, 781)."* Davis & Warshow v. Iser, Inc., 30 Misc. 2d 528 - NY: Supreme Court 1961
>
> Liens must comply with NYS LIE (Lien Law) Article 3 Sections 40 – 65 or NYS LIE Article 4 Sections 80 – 107 and follow Article 9 Sections 200 - 211

E. The Testimony of Special Agent Mark Maroney.

Special Agent Mark Maroney testified as to numerous documents recovered during the execution of a search warrant at defendant's home. Those documents included, among other things, ***[correspondence between legal counsel and defendant that the promissory notes of Denny Ray Harding]*** (mentioned above) ***were determined to be fraudulent based upon an evaluation by the Federal Reserve (see Trial Exhibit 27)***, a [***Liberty Data computer sheet containing the personal identification information of Michael Schnittman (see Trial Exhibit 36)]***,and ***[an American Express credit card account statement revealing charges for Liberty Data and the Washington State UCC Department of Licensing (see Trial Exhibit 25)]***.

Correspondence between legal counsel and defendant is privileged, and was not part of the search warrant, and should have been returned, which is fraud to be shown to U.S. Attorney since they were privileged and by reveling that the U.S. Attorney is in possession of privileged correspondence that was not allowed in the warrant and has nothing to do with a lien or notice of lien process is a violation of his ethics and a fraud on the court. The privileged correspondence according to Mr. Capezza states "***were determined to be fraudulent based upon an evaluation by the Federal Reserve (see Trial Exhibit 27)***" . This again is hearsay, and make conclusions of law, and concludes that the Federal Reserve conducted an evaluation. Whether trial Exhibit 27, says there was a Federal Reserve inquiry or evaluation, there was no testimony from the writer of

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the document this document (Trial Exhibit 27) of the facts in the document or that he or she even wrote the document, furthermore, according to Special Agent Maroney own testimony on December 30, 2010 pages 45-46 on cross follows;

Q. On the paragraph it says, "However, we have contacted the Federal Reserve who advised us this is a fraudulent document"?

A. Those words appear, yes.

Q. Okay, Did you ever in your course of the entire investigation, did you ever find a letter, and e-mail, communication from the Federal Reserve stating that it was an invalid bonded promissory note?

A. Did I find what he's reffering to, in other words?

Q. Right. Anywhere in your investigation.

A. No.

Q. Did Mr. Steven Baum or Susan, whoever signed the letter, did she ever provide you any communications that they had with the Federal Reserve that invalidated the bonded promissory note?

A. No, she did not.

Q. She did not. Did you – did you call the federal reserve Personally?

A. I did not.

Q. Did you write an e-mail to the Federal Reserve?

A. I did not contact the Federal Reserve at all.

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Q. You didn't contact the Federal Reserve at all. So if you would have brought the note to the Federal Reserve window, we don't know what they would have told you, is that correct, 'cause you didn't contact them?

A. Window, What do you mean?

Q. The Federal Reserve window in New York City.

A. I do not know what would happen if I brought it to the window.

Q. So, obviously, nobody, nobody brought it to the window.

A. I did not bring the promissory note over.

Q. And nobody in the FBI did, is that correct?

A. Nobody in this investigation brought it to the window.

So, it is a fraud upon the court to try to re-introduce evidence that was proved to be hearsay, invalid and with no foundation in fact or that it had any evidentiary value in this case. Even in Mr. Maroney's testimony, he (Maroney) NEVER called, email or by ANY other means contact the Federal Reserve, thereby never proving that the Bonded Promissory Notes were valid or invalid. These are conclusory statements NOT founded in any facts in evidence, and should be rejected in totality.

As far as the Liberty Data account and the American Express bill, Maroney was asked on cross if it was illegal to obtain a liberty data account and if Creditor was part of those allowed to have Liberty Data, Maroney could not answer, he did not review all categories. The facts are that the following among others, besides the fact you have a credit card, can obtain liberty data access are; Collections, Financial Credit, Due Diligence, Financial Compliance, Law Enforcement, Government, Administration, Law Office, Attorney,

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Licensed Investors, Research, Corporate or Corporations, Customs agent, Compliance, Shipping Compliance, Shipping Freight among others. So, it is not illegal and has no relevance to this case at all, and again just conclusory statements without facts in evidence.

II.

Argument

A. There Is No Basis For A Judgment Of Acquittal.

The documents filed with the New York Secretary of State, fully conformed with the New York State UCC Law, and were never rejected or claimed to be fraudulent by any witness or any agency, in this case or any other case, in fact the documents filed with the UCC-1 forms filed with the Secretary of State of New York and Washington State were found to be valid by two common-law juries. The prosecution never charged or proved that the documents in question (UCC1's an attached documentation) were fraudulent; the prosecution made conclusory statements without facts to support it. This is where effective assistance of counsel was lacking. *"the proof of mail fraud generally entails proving the underlying fraudulent conduct."* SCHMUCK v. UNITED STATES, 489 U.S. 705 (1989)

"The federal mail fraud statute does not purport to reach all frauds, but only those limited instances in which the use of the mails is a part of the execution of the fraud, leaving all other cases to be dealt with by appropriate state law." SCHMUCK v. UNITED STATES, 489 U.S. 705 (1989). There was never a charge in the indictment or presented by any witness or agency, or department that the documents filed in the New York, or Washington State, Secretaries of State were fraudulent, defective or constituted a fraud. *"It is ancient doctrine of both the common law and of our Constitution that a defendant cannot be held to answer a charge not*

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contained in the indictment brought against him." SCHMUCK v. UNITED STATES, 489 U.S. 705 (1989)

Another constitutional issue with the indictment and statue: I am challenging the mail fraud indictment and statue under the void for vagueness doctrine, which it certainly is. Vagueness doctrine is defined as; A constitutional rule that requires criminal laws to state explicitly and definitely what conduct is punishable. Criminal laws that violate this requirement are said to be void for vagueness. Vagueness doctrine rests on the due process clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution. By requiring fair notice of what is punishable and what is not, vagueness doctrine also helps prevent arbitrary enforcement of the laws.

Under vagueness doctrine, a statute is also void for vagueness if a legislature's delegation of authority to judges and/or administrators is so extensive that it would lead to arbitrary prosecutions. Skilling v. United States, 130 S.Ct. 2896 (2010).

If a person of ordinary intelligence cannot determine what persons are regulated, what conduct is prohibited, or what punishment may be imposed under a particular law, then the law will be deemed unconstitutionally vague. The U.S. Supreme Court has said that no one may be required at peril of life, liberty, or property to speculate as to the meaning of a penal law. Everyone is entitled to know what the government commands or forbids. The void for vagueness doctrine advances four underlying policies. First, the doctrine encourages the government to clearly distinguish conduct that is lawful from that which is unlawful. Under the Due Process Clauses, individuals must be given adequate notice of their legal obligations so they can govern their behavior accordingly. When individuals are left uncertain by the wording of an imprecise statute, the law becomes a standardless trap for the unwary. For example, vagrancy is a crime that is frequently regulated by lawmakers despite difficulties that have been encountered in

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defining it. Vagrancy laws are often drafted in such a way as to encompass ordinarily innocent activity. In one case the Supreme Court struck down an ordinance that prohibited "loafing," "strolling," or "wandering around from place to place" because such activity comprises an innocuous part of nearly everyone's life (*Papachristou v. City of Jacksonville*, 405 U.S. 156, 92 S. Ct. 839, 31 L. Ed. 2d 110 [1972]). The Court concluded that the ordinance did not provide society with adequate warning as to what type of conduct might be subject to prosecution.

Second, the void for vagueness doctrine curbs the arbitrary and discriminatory enforcement of criminal statutes. Penal laws must be understood not only by those persons who are required to obey them but by those persons who are charged with the duty of enforcing them. Statutes that do not carefully outline detailed procedures by which police officers may perform an investigation, conduct a search, or make an arrest confer wide discretion upon each officer to act as he or she sees fit. Precisely worded statutes are intended to confine an officer's activities to the letter of the law. Third, the void for vagueness doctrine discourages judges from attempting to apply sloppily worded laws. Like the rest of society, judges often labor without success when interpreting poorly worded legislation. In particular cases, courts may attempt to narrowly construe a vague statute so that it applies only to a finite set of circumstances. For example, some courts will permit prosecution under a vague law if the government can demonstrate that the defendant acted with a specific intent to commit an offense, which means that the defendant must have acted willfully, knowingly, or deliberately. By reading a specific intent requirement into a vaguely worded law, courts attempt to insulate innocent behavior from criminal sanction.

A fourth reason for the void for vagueness doctrine is to avoid encroachment on First Amendment freedoms, such as freedom of speech and religion. Because vague laws cause uncertainty in the minds of average citizens, some citizens will inevitably decline to take risky

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behavior that might land them in jail. (*Joseph Burstyn, Inc. v. Wilson,* 343 U.S. 495, 72 S. Ct. 777, 96 L. Ed. 1098 [1952]).

On 07/06/2010, a Judicial Notice, and Affidavit of Truth and a True copy of an Act of State Apostilled by the New York State Secretary of State filed on November 24, 2009, stamped and seal with number A-144092A was filed into the docket as number [12]. The Act of State was a Reaffirmation of Character and a Renunciation of expatriations.

The Striking of the record of my status before the court by Judge Homer, violated my rights and is a due process violation, and ignored my right of expatriation, (another constitutional violation) and never allowed the evidence into the record, or for the jury to see.

"The very first general rule laid down by Chitty, Pl. p. 1, is that 'the action should be brought ***in the name of the party*** *whose legal right has been affected, against the party who committed or caused the injury, or by or against his personal representative.'"* Tyler v. Judges of the Court of Registration, 179 U.S. 405, 407 (1900) [Emphasis added].

This court has never ruled and has not commanded an answer from the prosecution, thereby, proceeding in VOID. It is noteworthy, for this court to take notice that any NYSUCC and Notice of Lien has never been proven invalid by any New York State Court, and that the New York State UCC is a State and not a Federal issue.

That the UCC Notices of lien, have been ruled and been validated by **two juries**, in **common-law**, under the 7th amendment, and filed into this record by this court.

"When it clearly appears that the court lacks jurisdiction, the court has no authority to reach the merits. In such a situation the action should be dismissed for want of jurisdiction." Melo v. US. 505 F2d 1026 (1974)

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"Jurisdiction may never be assumed, not even by colorable claims or status or black robes or officialdom or appearances, but must be substantively proven by the plaintiff/claimant of said jurisdiction. Once challenged by any proper party the plaintiff/complaint must prove their jurisdiction in a timely manner." McNutt v. General Motors Acceptance Corp., 56 S.Ct. 502

Even if the court would have jurisdiction, they lost jurisdiction when they **denied me due process**, by denying and ignoring my status as a Secured Party Creditor, my witness's testimony, by ignoring and denying my Act of State filed with the Secretary of state of New York, ignored and never responded to my Affidavit of Non-Corporate Status, denying and ignoring my Uniform Commercial Code status filed with the Secretary of State for New York, by denying and ignoring my 7th amendment common-law adjudication by a jury of my peers, the numerous discovery violations and taking no action as required, and ignoring totally and never responding to the Dead-Man New York statue and not even replying to the paper. I have a right to due process of the law. I did not get due process, ***Title 5 U. S. Code section 556 (d)*** is clear and specific and says if they deny you due process of the law all jurisdiction ceases automatically. In this document and in the Amended Memorandum of Law and my numerous Affidavits' this court has denied and ignored me due process, "Well, if the court had jurisdiction at one time, judge, they lost it when they denied me due process.

The denial of unalienable rights, as to common-law jury and 7th amendment, the court ignored, but filed into the record the decision from the common-law court in Ulster-county, and proceeded with a second trial on the same subject matter (which they failed to obtain jurisdiction) where the matter was already resolved by a jury, in violation of due process.

In accordance to the 7th amendment, a properly seated Assembly of the people, held court in the One Supreme Court in Ulster-county, with a properly seated jury of peers, in front of a

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Justice of the Peace and held a hearing on the Foreign Case 10-CR-0321 from the United States District Court for the Northern District of New York.

On November 14, 2010, the One Supreme Court by the people for Ulster-county New York held a trial by jury and an initial review. Prior to November 14, 2010 all interested parties were sent and received, a Summons, a writ of Coram Nobis, a Letters Rogatory, Writ of Mandamus, Copy of Notice by the Ulster-county Court, filed November 3, 2010, Original 13th Amendment. On November 28, 2010, the One Supreme Court by the people, held a trial by jury and a final review on the Foreign Case 10-CR-0321. On November 28, 2010, the One Supreme Court by the people, wrote a final judicial determination which reads *"This Supreme Court and jury has reviewed the documents presented by Richard-Enrique and has determined that the filings with the New York State Secretary of State are proper and within proper Commercial Law of New York State and International Uniform Code. All documents claimed to be invalid or false in foreign case 10-CR-321 have been reviewed and deemed valid and proper" the court goes on to say "The resolution of the Supreme Court in common law cannot be heard by any other court n the United States as per the Bill of Rights Seventh Amendment which states….."* [See Docket 10, 11, 12 &13] which was sent to the trial judge only and he filed as a foreign judgment in this case. The court also states, *"The resolution of this conflict by this conflict by this de jure forum is final and is res judicata"*

On November 28, 2010, the One Supreme Court by the people, wrote a Declaratory Decree in foreign case 10-CR-321, which was filed into this record by the trial judge, which stated the foreign matter 10-CR-321 was dismissed.

In common-law, the justice of the peace, can preside over a federal question as in, The Justices v. Murray, 76 U.S. 274 (1869) *"This idea of calling to the aid of the federal judiciary*

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the state tribunals by leaving to them concurrent jurisdiction in which federal questions might be involved, with the right of appeal to the Supreme Court, will be found to be extensively acted upon in the distribution of the judicial powers of the United States in the act of 1789, known as the Judiciary Act. Besides the general concurrent jurisdiction in the Judiciary Act, a striking instance of this is found in the 33d section of the act, which provides

"That for any crime or offense against the United States the offender may, by any justice or judge of the United States, or by any justice of the peace or other magistrate of any of the United States where he may be found, agreeably to the usual mode of process against offenders in such state and at the expense of the United States, be arrested and imprisoned or bailed, as the case may be, for trial before such court of the United States as by this act has cognizance of the offense."" And the Supreme Court goes on to say in The Justices v. Murray, 76 U.S. 274 (1869), *"not matter from what court the case comes"*, quoted *"The natural inference is that no other was intended. Its language, upon any reasonable, if not necessary, interpretation, we think, applies to this entire class, no matter from what court the case comes, of which cognizance can be taken by the appellate court."*. The same applies as in this case that was tried by a jury of my peers, in the One Supreme Court of Ulster-county, a Common Law court, with a justice of the peace, and a retrial in the United States District Court of Northern New York, is not in pursuance of the Constitution, and is void. In, The Justices v. Murray, 76 U.S. 274 (1869), the court concludes, that, "*the removal of a judgment in a state court and in which the cause was tried by a jury to the circuit court of the United States for a retrial on the facts and law is not in pursuance of the Constitution, and is void.*"

"*He then suggests that Congress has full power to provide that in appeals to the Supreme Court there should be no re-examination of the facts where the causes had been tried by a jury*

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according to the common law mode of proceeding.", The Justices v. Murray, 76 U.S. 274 (1869).

"We will simply add, there is nothing in the history of the amendment indicating that it was intended to be confined to cases coming up for revision from the inferior Federal courts, but much is there found to the contrary." The Justices v. Murray, 76 U.S. 274 (1869).

In true common law, there are no obligatory rules or precedents. A common law court (a court of record) has unlimited jurisdiction and is independent of government. All external factors are, at best, advisory, not obligatory.

The founding fathers understood all that. At his 1801 inaugural Thomas Jefferson said, "Sometimes it is said that man cannot be trusted with the government of himself. Can he, then, be trusted with the government of others? Or have we found angels in the form of kings to govern him? Let history answer this question." And he wrote, "I know no safe depository of the ultimate powers of the society but the people themselves: and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion." [Letter, September 28, 1820.]

The self-correcting temporary imperfections of common-law were preferable to the entrenched imperfections of legislated written laws. That is why they chose the common law as the law superior to statutes and all other forms law. They expressed that choice through the Constitution's 7th Amendment **which essentially says that no court may second-guess (review) a decision by a jury.** Also, notice that, although the common law is outside of the Constitution, the Constitution authorizes the USA to support the common law with its judicial power. See Article III, Section 2-1. A statutory or constitutional court (whether it be an appellate or Supreme Court) may not second guess the judgment of a common law court of record. **The**

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Supreme Court of the USA acknowledges the common law as supreme: *"The judgment of a court of record whose jurisdiction is final, is as conclusive on all the world as the judgment of this court would be. It is as conclusive on this court as it is on other courts. It puts an end to inquiry concerning the fact, by deciding it."* Ex parte Watkins, 3 Pet., at 202-203. [cited by SCHNECKLOTH v. BUSTAMONTE, 412 U.S. 218, 255 (1973)]

"The aim of the Amendment is to preserve the substance of the common law right of trial by jury, as distinguished from mere matters of form or procedure, and particularly to retain the common law distinction between the province of the court and that of the jury" BALTIMORE & CAROLINA LINE, INC. V. REDMAN, 295 U. S. 654 (1935)

"The trial by jury is justly dear to the American people. It has always been an object of deep interest and solicitude, and every encroachment upon it has been watched with great jealousy. The right to such a trial is, it is believed, incorporated into and secured in every state constitution in the Union." PARSONS V. BEDFORD, BREEDLOVE & ROBESON, 28 U. S. 433 (1830)

"By "common law," the framers of the Constitution of the United States meant what the Constitution denominated in the third article, "law," not merely suits which the common law recognized among its old and settled proceedings, but suits in which legal rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were regarded, and equitable remedies were administered, or where, as in the admiralty, a mixture of public law and of maritime law and equity was often found in the same suit." PARSONS V. BEDFORD, BREEDLOVE & ROBESON, 28 U. S. 433 (1830)

"The amendment to the Constitution of the United States by which the trial by jury was secured may in a just sense, be well construed to embrace all suits which are not of equity or admiralty

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jurisdiction, whatever may be the peculiar form which they may assume to settle legal rights." PARSONS V. BEDFORD, BREEDLOVE & ROBESON, 28 U. S. 433 (1830)

"It is the Constitution which we are to interpret, and the Constitution is concerned not with form, but with substance. All of vital significance in trial by jury is that issues of fact be submitted for determination with such instructions and guidance by the court as will afford opportunity for that consideration by the jury which was secured by the rules governing trials at common law. See Herron v. Southern Pacific Co., 283 U. S. 91. Beyond this, the Seventh Amendment does not exact the retention of old forms of procedure. See Walker v. Southern Pacific R. Co., 165 U. S. 593, 165 U. S. 596. It does not prohibit the introduction of new methods for ascertaining what facts are in issue (see Ex parte Peterson, 253 U. S. 300, 253 U. S. 309), or require that an issue once correctly determined, in accordance with the constitutional command, be tried a second time, even though justice demands that another distinct issue, because erroneously determined, must again be passed on by a jury." GASOLINE PRODUCTS CO., INC. V. CHAMPLIN REFINING CO., 283 U. S. 494 (1931)

***Held: The Fourth Circuit violated petitioner's Seventh Amendment right to a jury trial. Because the Amendment prohibits the reexamination of facts determined by a jury**, a court has no authority, upon a motion for a new trial,"* HETZEL *v.* PRINCE WILLIAM COUNTY, VIRGINIA, ET AL. 523 U.S. 208 (1997)

In this case, there is no evidence of intent, there was no scheme developed, there was never any proof that the bonded promissory notes were void or invalid or fraudulent, there was never any proof that the Notices of Lien filed, were ever taken to the next proper steps to securitize them before a magistrate federal judge or a state judge, then filing them with the court, country

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recorder and the sheriff as REQUIRED BY NEW YORK STATE LAW, instead the prosecution believes that by bring conclusory statements, that those statements constitute facts, and the Administrative Contracts sent to public servants were part of the Criminal Complaints that were filed against them and that they acquiesced to by not replying as required by law and the by their fiduciary requirements as "public servants" to the people. The prosecution fails to understand the Uniform Commercial Code, and is incompetent to present a case in the commercial realm. The prosecution has ignored U.S. Supreme court case law, as it did not apply to them.

The prosecution in ending their ridiculous responses such as *"In his motion, defendant makes, series of irrelevant statements, raises challenges to jurisdiction and other issues that are without merit and have previously been addressed by the Court, fails to recognize the legal requirement that, for purposes of this motion, the trial evidence must be construed in light most favorable to the government, and fails to respect the factual determinations that have already been made by trial jury. Defendant's claims are therefore without merit and the Court should reject his motion."*

As, stated before this prosecution's contempt for the U.S. Constitution is beyond comprehension, the issues of protected constitutional violations are not ***"a series of irrelevant statements"***, this prosecutor has never addressed the issue of jurisdiction, and without him addressing this issue, this court operated in Void, it is not the courts responsibility to address the jurisdiction issue, it is the prosecutions responsibility to obtain it when it is challenged, as it has at almost every step in this process, and the prosecutor has ignored it, as if it was some ***"factual determination"***.

In my opinion, this prosecutor has never proven who the plaintiff is, whether there was personal or subject matter jurisdiction etc, and has ignored his fiduciary responsibilities to me as the

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Beneficiary, and Executor of the Trust, and for these issues and in the best interest of justice, my Motion should be granted.

ALL RIGHTS RESERVED TO AMEND WITHOUT LEAVE OF COURT WITH MY CHOICE OF LAW AND MY CHOICE OF COURT

I pray to our Heavenly Father and not this court that justice be done.

Reserving ALL Natural God-Given Unalienable Birthrights, Waiving None, Ever,

28 USC §1746

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true, complete and correct. 28 USC §1746

Signed on this the fifteenth day of the fourth month in the year of our Lord and Savior two thousand eleven.

: Richard-Enrique

Richard-Enrique, unrepresented
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Nation "New York".
general post-office.
Hurley-town.
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Proof and Evidence of Service

I, Richard-Enrique; Ulloa: *declare that I served by filing one copy of the "OBJECTION TO ORDER ON GRAND JURY TRANSCIPTS" by* "hand-delivered by private carrier-service on "USDC of Northern NY" sent by post-office-first class-mail AND OR CERTIFIED MAIL *to the following:*

THOMAS A. CAPEZZA (Electronic)	USDC OF NORTHERN NY
Assistant U.S. Attorney Bar #503159 (NOTICE)	COURT CLERK
445 Broadway, Room 509 BY Clerk	445 Broadway, Room 509
ALBANY, NEW YORK [12207]	ALBANY, NEW YORK [12207]
First class mail	First class mail

:Richard-enrique:

:richard-enrique:

April 15, 2011

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"RICHARD ENRIQUE ULLOA", Estate.
Office of Executor
Nation "New York".
General-Post Office.
Hurley-town.
United States Minor, Outlying Islands. Near. [12443-9998]

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1000
13901
U.S. POSTAGE
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HURLEY,NY
12443
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AMOUNT
$0.12
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Honorable Thomas Mcavoy, Senior District Judge
Federal Building And United Stattes Courthouse
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